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AUG 28 2008

OFFICE OF PETITIONS

In re Application of
Hadad, Zion
Application No. 09/624,237
Filed: July 24, 2000
Attorney Docket No. 18023.1050

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 13, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the restriction requirement mailed September 24, 2004, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 25, 2004. A Notice of Abandonment was mailed June 28, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,¹
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

The instant petition lacks item(s) (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and
- (3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for period (3).

A petition under 37 CFR 1.137(b) was filed on September 15, 2005, which was subsequently dismissed on September 26, 2005 for failure to provide a reply to the September 2004 Office action. A two-month time period was set for any request for reconsideration. Here, in view of the inordinate delay (almost 3 years) in filing a renewed petition, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

37 CFR 1.137(e) specifies a time period within which a renewed petition pursuant to 37 CFR 1.137 must be filed to be considered timely. Where an applicant files a renewed petition, request for reconsideration, or other petition seeking review of a prior decision on a petition pursuant to 37 CFR 1.137 outside the time period specified in 37 CFR 1.137(e), the Office may require, *inter alia*, a specific showing as to how the entire delay was "unintentional." A delay resulting from the applicant deliberately chooses not to persist in seeking the revival of an abandoned application cannot be considered "unintentional" within the meaning of 37 CFR 1.137. The correctness or propriety of the decision on the prior petition pursuant to 37 CFR 1.137, the correctness of the applicant's decision not to persist in seeking revival, the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision to not persist in seeking revival are immaterial to such intentional delay caused by the deliberate course of action chosen by the applicant.

Further correspondence with respect to this matter should be addressed as follows:


By mail: Mail Stop PETITIONS
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By hand: Customer Window located at:

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By fax: (571) 273-8300
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.


Liana Walsh
Petitions Examiner
Office of Petitions